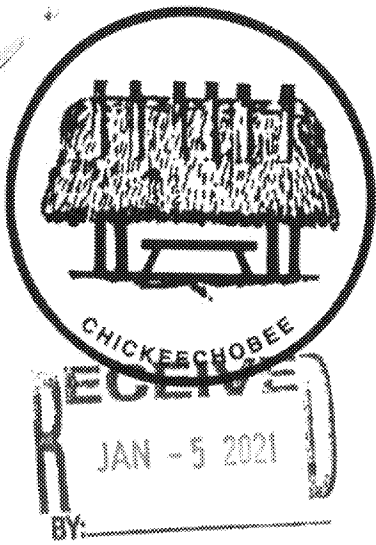


Miccosukee Tribe of Indians of Florida



Business Council Members

Billy Cypress, Chairman

Lucas K. Osceola, Assistant Chairman
Jerry L. Cypress, Treasurer

Talbert Cypress, Secretary
Petty Osceola Jr., Lawmaker

December 17, 2020

Andrew Wheeler
EPA Administrator
Environmental Protection Agency
MS 1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Outstanding Request for Government to Government Consultation
Definition of Indian Country – State of Florida Assumption of CWA Section 404
Permitting

Dear Administrator Wheeler;

The Miccosukee Tribe of Indians of Florida ("Tribe"), exercising powers of self-governance under a Tribal constitution approved by the Secretary of Interior, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476, is a federally-recognized and federally-protected Indian Tribe, whose members live and work within the Florida Everglades, whose land interests lie within the greater Florida Everglades, including Everglades National Park, Big Cypress National Preserve and Water Conservation Area 3A. The Miccosukee's cultural identity and way of life is dependent upon the natural Everglades. The entire way of life of the Tribe and its members, including their cultural, religious, economic, and historical identity, is based in the Everglades and upon the preservation of the Everglades in its natural state.

Region 4 of the Environmental Protection Agency ("EPA") is currently evaluating an application by the State of Florida to assume Section 404 permitting under the Clean Water Act. The Miccosukee have engaged in consultation with Region 4 personnel on this very important issue due to the magnitude of impact to the Tribe's way of life. The Miccosukee have formally requested that Region 4 continue with that consultation process along with the US Army Corps of Engineers ("USACOE") to discuss the specific use of 18 U.S.C. § 1151 and the specific lands that the EPA and USACOE consider to fall outside of that definition of Indian Country should the EPA move forward with approval of the state's 404 program. Their narrow interpretation of Indian Country has severe consequences for the Miccosukee Tribe and adversely impacts rights of the Miccosukee people, codified in law, within Everglades National Park, Big Cypress National Preserve and Water Conservation Area 3A. All of these areas are replete with

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Constitution Approved by the Secretary of the Interior, January 11, 1962

culturally sensitive sites protected by NAGPRA and will impact traditional Indian camps within these areas, all of which are occupied by Miccosukee people to this day.

The Miccosukee received a letter from Region 4 yesterday, December 16th, attached for your review, which declines our request for consultation on this important issue. In fact they have indicated they will consult at a later time, if they feel it is necessary regarding specific applications only. It must be noted that a request for meaningful government to government consultation in accordance with Executive Order 13175 by a federally recognized tribe, should always be granted. The Miccosukee have never had an occasion where a federal agency has denied such a request. It is particularly dismaying that EPA has chosen to deny such a request when it involved a matter of such great import such as culturally sensitive sites, codified rights and occupied native camps. It is of particular concern when the tribes that are specifically impacted have yet to receive any list or map from either EPA or USACOE which would provide those tribes with a clear understanding of the particular lands which are included in Indian Country, but most importantly are not included. When the Miccosukee and other tribes have asked for this information to ensure that the agencies have a complete understanding of all Tribal lands which EPA would retain permitting authority, lands which one would think would definitely be considered as Indian Country, we have been told it is forthcoming but have yet to be provided that critical information.

The Miccosukee understand that EPA is under a strict timeline to either approve or deny the State of Florida's application. However, we ask that EPA seek additional time from the state of Florida, if necessary, and continue the government-to-government process so that meaningful consultation may continue on this very important topic.

Sincerely,



Billy Cypress
Chairman

cc: Business Council
Jeanine Bennett, Esq., In-House General Counsel
Jeananne Gettle, Director, Water Division, EPA Region 4
Suzanne Armor, Regional Tribal Attorney, Region 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104
December 15, 2020

Ms. Jeanine Bennett
General Counsel
Miccosukee Tribe of Indians of Florida
P.O. Box 440021 Tamiami Station
Miami, Florida 33144

Subject: Consultation and Coordination on the Environmental Protection Agency's Action on the
State of Florida's Request to Assume Administration of a CWA Section 404 Program

Dear Ms. Bennett:

Thank you for the email dated December 9, 2020, requesting further consultation with the EPA and the U.S. Army Corps of Engineers (Corps) regarding the State of Florida's assumption of Section 404 permitting.

As you know, on August 31, 2020, the EPA extended the opportunity for consultation and coordination with the Miccosukee Tribe of Indians of Florida (MTIF) on the EPA's upcoming decision to approve or disapprove Florida's request to assume administration of a Clean Water Act (CWA) Section 404 program for certain State waters. The EPA appreciates the MTIF's active participation in the consultation process. We have received, reviewed, and considered your comments.

With regard to your most recent request, we understand that you seek to have further engagement regarding whether specific lands constitute Indian country under the definition set forth at 18 U.S.C. § 1151. The EPA believes that case-specific questions regarding what lands meet the definition of Indian country should be considered on a case-by-case basis during implementation. However, should the EPA approve Florida's assumption of the CWA Section 404 program, EPA stands ready to discuss these matters with the MTIF in January and will be available to meet with the MTIF and the relevant permitting authority as specific instances arise.

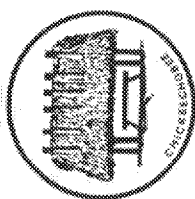
If you have any questions regarding this letter, please do not hesitate to call me at (404) 562-9345 or have a member of your staff contact Mr. Kelly Laycock at (404) 562-9132 or via email laycock.kelly@epa.gov.

Sincerely,

JEANEANNE GETTLE

Digitally signed by JEANEANNE
GETTLE
Date: 2020.12.15 11:10:37 -05'00'

Jeanneanne M. Gettle, Director
Water Division

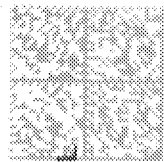


**Miccosukee Tribe of Indians
of Florida**

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EPA Administrator
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1200 Pennsylvania Ave., NW
Washington, DC 20460

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